

**DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND WATERWAYS
TITLE 14, ARTICLE 8**

Yacht and Ship Broker Licenses

7601. General Definitions.

Unless otherwise expressly indicated or compelled by the context in which used, words, phrases, and references appearing in this Chapter shall have meanings as ascribed herein.

(a) An “exclusive listing” is a written agreement between the owner of a vessel and a broker which provides that the commission is due the broker named in the contract if the boat is sold, traded, or exchanged within the time limit which must be specified in the contract by the said broker, by any other broker, or by the owner.

(b) An “open listing” is a written agreement between the owner of a vessel and a broker which authorizes the broker to negotiate the sale, trade, or exchange of the vessel, but reserves to the owner the right, without incurring a liability for the payment of a commission to said broker, to negotiate the sale, trade, or exchange of said vessel himself, or to enter into open listing agreements with other brokers respecting said vessel.

(c) “Advertising” is any written or printed communication or oral communication made in accordance with a text or outline that has been reduced to written form which is published for the purpose of inducing persons to sell or purchase a product or use a service.

(d) An “applicant” is a person applying to the Department of Boating and Waterways for a license.

(e) The “Act” is the Yacht and Ship Brokers Act and regulations pertaining thereto.

(f) The “Code” is the Harbors and Navigation Code.

(g) The “Director” is the Director of the Department of Boating and Waterways.

(h) The “Department” is the Department of Boating and Waterways.

(i) An “examination” is an examination to qualify for any license issued under authority of the Yacht and Ship Brokers Act.

(j) A “license” is any license issued under authority of the Yacht and Ship Brokers Act.

(k) The “licensee” is a licensed broker or salesman.

(l) A “permanent license” is a Yacht and Ship Broker’s or Salesman’s License originally issued for one year and renewable for one or two years, as opposed to a salesman’s temporary license issued for sixty days.

(m) The “Yacht and Ship Brokers Act” is Chapter 5 of Division 3, Article 2 of the Code.

(n) “Consummated” means that buyer and seller shall have a signed purchase agreement, which agreement shall contain all the conditions of the sale, and said conditions have been met.

(o) “Completed” means all the conditions of the purchase agreement have been met and the bill of sale has been passed from seller to buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 701, Harbors and Navigation Code.

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7602. Advertising.

(a) Advertising of any service for which a license is required under the provisions of the Yacht and Ship Brokers Act shall disclose the name of the business as shown on the required license.

(b) In addition to the name of the broker on signs or in advertising, the words "licensed yacht broker," "yacht broker," "ship broker," or "boat broker," or "brokerage" in each such context may be used to indicate that the broker is a licensed yacht broker.

(c) No person, firm, or corporation may use any of the designations set forth in subdivision (b) hereof unless duly licensed under the Yacht and Ship Brokers Act, or otherwise exempted by law.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 708, Harbors and Navigation Code.

7603. Investigative Authority.

(a) The department may, with reasonable cause to suspect that a person or business is acting in the capacity of a broker, investigate that person or business to ascertain whether a license is or is not required.

(b) The department shall have authority to investigate and take lawful action deemed advisable with regard to complaints against brokers or salesmen acting only in a capacity for which they must be licensed.

(c) Any person, including a partnership or corporation purchasing used yachts for resale or taking yachts in trade for resale, shall transfer actual title to any such yacht into his name, or have in his possession, subject to inspection by the department, a good and sufficient bill of sale or other fit evidence of title if such person or firm wishes to claim exemption from licensing requirements of the Yacht and Ship Brokers Act.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 706, 720, 732, 733 and 734, Harbors and Navigation Code.

7604. Trust Accounts.

(a) In the absence of the broker, a licensed salesman authorized in writing by the broker, or other persons authorized by this section to make withdrawals from trust accounts, shall make deposits to trust accounts pursuant to section 714 of the Harbors and Navigation Code. Withdrawals shall not be made from a trust account maintained as provided by section 714 of the Harbors and Navigation Code except upon the signature of at least one of the following:

(1) The broker;

(2) A salesman, or group of salesmen jointly who are in the employ of the broker and who have been authorized in writing by the broker to make withdrawals from such trust accounts. The broker shall not authorize more than one salesman or group of salesmen at any one time to make such withdrawals;

(3) Where the licensee is a corporation, any corporate officer who may be designated in writing by the corporation.

(b) Every broker required to maintain such trust fund account shall keep

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records of all funds deposited therein, which records shall clearly indicate the date and from whom he received the money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction.

(c) Failure to maintain a trust fund account when required, and to deposit trust funds received promptly in said account, may be construed to be commingling, in violation of section 732, subsection (e) of the Harbors and Navigation Code.

(d) Upon request, the above-written authorization shall be made available to the department for its inspection.

(e) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(f) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (e) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account or into the hands of the offeree if offeror and offeree expressly so provide in writing not later than the next business day following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

NOTE: Authority cited; Section 703, Harbors and Navigation Code. Reference: Sections 714 and 716, Harbors and Navigation Code.

7605. Shared Listings.

If a broker intends to or does share a listing with other brokers, he must obtain authorization in writing from his principal to do so in his authorization to sell (listing agreement).

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 716, Harbors and Navigation Code.

7606. Fees.

In addition to license examination fees required by Sections 717 and 718 of the Harbors and Navigation Code to accompany applications for licenses, all other appropriate fees prescribed by Section 736 shall accompany such applications.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 736, Harbors and Navigation Code.

7606.1. Time Periods for Processing Yacht and Ship Broker, Salesman, and Associated Licenses.

(a) The Department shall notify the applicant, in writing, within 10 days from receipt of application, that the application is complete, or that the application is deficient, and what specific information is required.

(b) The Department shall then process the completed application for

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license(s), as required by Sections 717, 718, 722, 723, 724, 725, 727, 728, 729, and/or 735, Harbors and Navigation Code, and reach a decision to issue a license within 30 to 90 days, the median being 60 days.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 724, Harbors and Navigation Code; and Section 15376(a)–(c), Government Code.

7607. Written Examination.

An applicant who fails to appear for a scheduled written examination without notifying the Department prior to the exam date shall forfeit the examination fee and be required to pay an additional exam fee prior to taking any subsequent examination.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 717, 718 and 721, Harbors and Navigation Code.

7608. Broker Qualifications.

(a) In addition to those persons specified in Section 719 of the Harbors and Navigation Code, if an individual can show that department records are incorrect, and he can, in fact, prove that he has been employed as a licensed Yacht and Ship Broker or Salesman for at least one year within the preceding five years, such applicant shall be deemed qualified to take the Yacht Broker's examination for a Yacht and Ship Broker's License.

(b) In addition to applicants described in Section 719(d), every applicant for a broker's or salesman's license and every person entitled to act in the capacity of a broker on behalf of a corporation or partnership shall be at least 18 years of age.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 719, Harbors and Navigation Code.

7609. License Reinstatement.

Application for reinstatement of a license shall be on a form furnished by the department and must be accompanied by the appropriate fees.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 726 and 736, Harbors and Navigation Code.

7610. License Renewal (Failure to) Penalties.

(a) (Reserved)

(b) Any licensee who has failed to notify the department of a change of address, business structure, or in the case of a salesman, employing broker prior to renewal of license, and who does not submit the proper fee or fees for such change along with his renewal application and whose renewed or changed license is delayed beyond the expiration date of the license all or partly because of such failure, shall be subject to the penalty for reinstatement under provisions of Section 724(b) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 722, 723, 724, 726 and 738, Harbors and Navigation Code.

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7611. Temporary Salesman's License.

- (a) For purposes of Section 719(a) of the Harbors and Navigation Code, experience while holding a temporary license as a salesman shall not be considered as partial experience necessary to qualify for a broker's license.
- (b) In the event a salesman having the only temporary license permitted by subsection 725(a) of the Harbors and Navigation Code does not obtain a permanent license, and two years have passed since the expiration date of such temporary license, the department may issue another temporary license, pursuant to provisions of subsection 726(a) of the Harbors and Navigation Code.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation Code.

7612. Salesman's License, Transfer of, Restrictions on Employment.

- (a) A temporary license to act as a salesman will be issued only to an applicant who has valid employment as such salesman with a duly licensed broker.
- (b) A salesman's license or temporary salesman's license shall become inoperative upon the termination of such salesman's employment by a licensed broker, or upon the suspension or revocation of the employing broker's license. However, such salesman's license may be transferred to another licensed broker upon the holder's request. Such request for transfer must be accompanied by an application, as prescribed by the department, in writing executed by the new broker and the appropriate fee.
- (c) No salesman shall associate himself with more than one broker concurrently.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 719, 725 and 726, Harbors and Navigation Code.

7613. Corporation and Partnership Licenses.

- (a) A broker's license issued to a corporation or partnership shall disclose the name and license number of the corporation or partnership, along with the name of the officer or partner entitled to act on behalf of the corporation or partnership. Additional licenses issued to other officers or partners acting on behalf of the corporation or partnership only shall disclose the name and license number of the corporation or partnership, followed by the name of such additional officers or partners. In the event the corporation or partnership is dissolved, all licenses disclosing the name and number of the corporation or partnership become invalid.
- (b) In the event a licensed partner of a partnership, who is also licensed as a broker on his own behalf while acting on behalf of the partnership, violates any provision of the Yacht and Ship Brokers Act or regulations pertaining thereto, which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed partner, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on

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behalf of the partnership are both subject to such suspension or revocation, and if necessary, his bond is subject to attachment.

(c) In the event a licensed officer of a corporation, who is also licensed as a broker on his own behalf while acting on behalf of the corporation, violates any provision of the Act or regulations pertaining thereto which is grounds for suspension or revocation of a license, both licenses may be suspended or revoked, and if necessary, either or both bonds attached. If such licensed officer of a corporation, while acting on his own behalf commits such violation, his licenses to act on his own behalf and on behalf of the corporation are both subject to such suspension or revocation and his bond is subject to attachment.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 728 and 729, Harbors and Navigation Code.

7614. Broker's Bond or Deposit.

(a) The Yacht and Ship Broker's Bond Endorsement used shall be of the form prescribed and provided by the department.

(b) The department may not release its interest in a cash deposit made pursuant to section 731 of the Harbors and Navigation Code until a surety bond, dated to include the period for which the cash deposit was made, is filed with the department.

(c) The period required by subsection (b) will not exceed four years.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 730 and 731, Harbors and Navigation Code.

7615. Coercive and Oppressive Methods.

It shall constitute coercive and oppressive methods within the meaning of Section 732, subsection (g) of the Harbors and Navigation Code, if a licensee who is also the owner, operator, or otherwise in charge of a landing pier or mooring place:

(a) Exacts or demands all or part of a broker's fee or commission from the sale by the owner or any other licensed broker or salesman of any yacht or boat moored at said landing pier or mooring place solely because said yacht or boat was or is moored at such pier or landing place;

(b) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by an owner of a boat or yacht for the reason that said boat or yacht is listed for sale with another licensee;

(c) Expels or denies or refuses to permit the continued use or lease of such landing pier or mooring place by the purchaser of a boat or yacht moored at such landing pier or mooring place because another licensee had made the sale of such boat or yacht.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 732 and 733, Harbors and Navigation Code.

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7616. Definite Place of Business.

A definite place of business shall mean premises owned, rented, or leased by the broker which premises shall be locatable at a street address or road intersection and/or slip number, if applicable. A post office box and/or telephone number shall not be considered a definite place of business.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735,

7617. Branch Offices.

(a) Any broker who regularly transacts business at a location other than his established principal office, or who employs other brokers or salesmen to do so shall be deemed to be maintaining a branch office at such location.

(b) A temporary exhibit of less than three weeks duration at a county or state fair or an organized boat or sport show shall not be deemed a branch office.

(c) If a broker uses more than one fictitious business name at the same location, a separate branch office license shall be obtained in addition to the current principal or branch office license at that location.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 708 and 735, Harbors and Navigation Code.

7618. Identification Card.

(a) A broker's identification card shall be issued only to the person named on the license, and there shall also appear on such card the name of the corporation, partnership or association which he represents. The broker to whom such identification card is issued shall place his signature thereon.

(b) A salesman's identification card shall be issued only to a licensed salesman, and shall bear the name of the employing licensed broker. The salesman shall place his signature thereon.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 735, Harbors and Navigation Code.

7619. Broker-Salesman Relationship Agreement.

Every broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties. Signed copies of the agreement shall be retained by the parties thereto, and shall be available for inspection by the department or its designated representative on request.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 703, Harbors and Navigation Code

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7620. Retention of Records.

A licensed broker shall retain for four years copies of all listings, deposit receipts, cancelled checks, trust records, and other documents executed by him or obtained by him in connection with a transaction for which a Yacht and Ship Broker's License is required. Upon request, these records shall be made available to the Department for their inspection.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703, 714, 715 and 716, Harbors and Navigation Code.

7621. Government Office.

When the holder of a Yacht and Ship Broker or Salesman's License is required to relinquish his license to assume an office in local, state, or federal government, he may have it reinstated at any time within six months of termination of his service in such office upon payment of the appropriate renewal fee.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Section 724, Harbors and Navigation Code.

7622. Property Taxes.

Any agreement between a buyer and seller of a yacht negotiated by a broker to prorate personal property taxes for a twelve-month period shall specify the applicable tax year and the date of the commencement of such twelve-month period, and shall clearly state the actual amounts payable by the seller and buyer.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 703 and 716, Harbors and Navigation Code.

7623. Offers.

(a) The licensee must present or cause to be presented to the owner of the vessel any offer to purchase received prior to the completion of a sale, unless expressly instructed by the owner not to present such an offer.

(b) A licensee shall not present competing offers to purchase a vessel to the owner in such manner as to induce the owner to accept an offer which will provide the greatest compensation to the licensee, without regard to the benefits, advantages, and/or disadvantages to the owner.

NOTE: Authority cited: Section 703, Harbors and Navigation Code. Reference: Sections 709 and 716(c), Harbors and Navigation Code.